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Presented were answers to questions that arose when the Supreme Court made the decision on the integration of schools. The decision applied to all State-supported educational institutions. The authority of State laws was questioned, but no State law requiring or permitting segregation in public schools was now valid. The responsibility for initiating specific plans for compliance with the Supreme Court's decision was in the hands of the officials of each school district. Whether Congress could supersede the decision was questioned; the answer was that it could not lawfully set aside the constitutional requirement, but it could enact implementing statutes which could supersede in whole or in part the authority given to Federal district courts.

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WHAT THE SUPREME COURT SAID...

The School Segregation Decisions, with an Analysis by Prof. Robert A. Leflar

Office of Education-EEOP
Research and Materials Branch Bennett O. Stalvey

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WHAT THE COURT REALLY SAID

by ROBERT A. LEFLAR

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Robert A. Leflar, Professor of Law at the University of Arkansas and formerly at New York University, was associate justice of the Supreme Court of Arkansas from 1949 to 1951 and dean of the law school at the University of Arkansas from 1943 to 1954. He directed the legal research underlying The Negro and the Schools, *and with Wylie H. Davis, former Professor of Law at the University of Arkansas School of Law, wrote a summary of the findings in an article entitled "Segregation in the Public Schools — 1954," published in the January 1955 issue of the* Harvard Law Review.

THE most striking feature of the May 31 decision is the unanimity of the court. As with the decision handed down a year ago, there is left no room for difference of opinion. This is the law.

Five key terms in the opinion give its real meaning. Four are in plain non-legal English. They are "good faith," "practical flexibility," "prompt and reasonable start" and "deliberate speed."

The other is "equitable principles," which has reference to the somewhat technical but broadly fair and reasonable procedures traditionally followed in courts of equity. To lawyers, the two cases cited by the court in footnotes will go far to clarify this technical reference.

These simple phrases set the tone of the opinion itself and of what is to be required under it.

The decision comes closer to the position taken in argument by the southern white lawyers and attorneys general than to the arguments of NAACP counsel and of Solicitor General Sobeloff for the Department of Justice. The absence of deadlines and other detailed requirements is in this respect the difference.

But the court's clear statement that all contradictory state constitutional provisions and enactments are unconstitutional was requested by NAACP counsel and by Solicitor General Sobeloff, and all parties were agreed in urging that the cases be remanded to the district courts for implementation rather than controlled by the Supreme Court itself.

The court might have required more rigorous and immediate compliance with the constitutional principles announced a

year ago but the procedure now prescribed may encourage ultimate compliance with less public disturbance than might have ensued had the court's orders been more drastic.

The law prohibiting segregation in public schools is now clear. It may be assumed that many school districts will obey the law with reasonable promptness and without litigation. The judicial procedures prescribed by the Supreme Court will never have to be applied to them. But in some states and communities litigation will be a condition to compliance.

A great deal of such litigation must be anticipated. Defendants, for the most part, probably will be seeking delay rather than ultimate victory, so that delay will be their victory.

In the following questions and answers, an effort is made to deal briefly, without legal technicalities, with the principal problems that are being raised with reference to the May 31 decision.

1. To what extent is this decision binding on school districts other than the five which are parties to the decision.

A. Only as the decision is "the law of the land." Separate new proceedings will have to be brought against each non-complying district.

2. Does the Supreme Court decision apply only to grade schools and high schools?

A. No. It applies to all state-supported educational institutions. This would include state universities, colleges, junior colleges, trade and vocational schools, specialized schools such as those for the deaf, dumb and blind, etc.

3. Does the Supreme Court decision have any application to private schools?

A. No. Except as private schools may be actually sponsored by the state, thus constituting an evasive form of state schools rather than bona fide private schools. But a state law requiring segregation in private schools is clearly unconstitutional.

4. If a school district is ready and willing to desegregate its schools, what is the next step for it to take?

A. It should comply with "the law of the land" at the earliest possible date.

5. If a school district is ready and willing to desegregate but is deterred by state law or pressure from outside the district, what is its legal position?

A. No state law requiring or permitting segregation in public schools is now valid. The Supreme Court is very specific about that. The school district may disregard such unconstitutional enactments. No further legal proceedings are necessary to establish their invalidity. As to outside pressures, they may affect public funds available for school purposes.

6. What is the legal position of a school district which does not want to desegregate?

A. It has the legal power, by ignoring the decision, to delay desegregation until it is forced by legal proceedings to comply with the law.

7. To what extent is a local school board controlled, as to its policy, by state boards or state administrative agencies?

A. This depends upon the law of the particular state and the degree of administrative independence vested by state law in local boards. It remains true, however, that any administrative requirement that segregation be maintained or any rule or regulation which is designed even indirectly to maintain segregation is itself unconstitutional.

8. Is there any procedure where a school board which in good faith wishes to proceed with a plan for desegregation can receive judicial approval of the plan in advance of putting it into effect?

A. There is not. The federal courts are by law authorized to hear and pass only on actual "controversies." They will not hear "moot" cases. There may, however, be some possibility of arranging litigation through "friendly suits."

9. What may happen if a school board is reluctant to comply?

A. Apart from normal public pressures, lawsuits may be brought, but only by persons actually deprived of legal rights by the board's action. In general, this probably means that lawsuits would have to be brought by Negro students or their parents.

10. Will such suits be "class suits?"

In most cases they may be. This means that one suit can represent all Negroes in an entire school district as a "class."

11. Were the cases just decided by the U. S. Supreme Court "class suits?"

A. Apparently not. At least the court in its final paragraph seemed to confine its decision to "the parties in these cases." This presumably does not mean, however, that "class suits" may not be brought, if properly identified as such.

12. In suits hereafter brought in other school districts, what relief will be sought?

A. In most cases, plaintiffs will probably ask for declaratory judgments setting out their rights on the facts proved, to be accompanied by injunctions restraining future violation of these rights. Actions for damages for violation of legal rights are possible but have not often been employed in situations such as these.

13. Does the Supreme Court decision set a pattern for the decision of future cases?

A. Yes, it is a binding precedent substantively, and also indicates the way in which future cases will be handled, procedurally.

14. Does the Supreme Court's May 31 opinion advance or recede from the position taken by the court a year ago?

A. Neither. It reaffirms the 1954 decision, makes it clear that the 1954 decision is "the law of the land" and issues an implementing order to the lower courts in the specific cases

before it. That is all it does.

15. Would it have been possible for the court to be more rigorous in requiring prompt compliance?

A. Certainly. The court has allowed much leeway in details to the federal district courts, which it need not have done. Presumably it will allow similar leeway in future cases that come before it. Undoubtedly, the court chose this non-rigorous course for reasons it deemed to be of vast importance.

16. Is the Supreme Court's decision sufficiently definite that a lower federal court sitting on one case will necessarily be guided by it to the same result as is reached by another federal court sitting on another case?

A. No. Differences in details both as to administrative arrangements and as to timing of desegregation are expressly permitted by the court's decision. But general patterns of decision may be expected to emerge as time goes on.

17. Who has the responsibility for initiating specific plans for compliance with the decision?

A. The officials of each school district. But if and when such plans come before the courts (as in the cases now pending or in future litigation in other districts) the federal courts will have broad supervisory powers, not only to approve or disapprove specific plans submitted to them but also to suggest, discard and select among alternative plans, and ultimately to require submission of an acceptable plan.

18. If a local school board fails or refuses to submit a plan that can be judicially approved, what sanctions may a federal district court apply?

A. Punishment for contempt, which may be either by fine or imprisonment.

19. How detailed must local plans be?

A. That is as yet undecided, but clearly depends on the problems in each community. A plan for complete and immediate integration could be quite brief, with little detail, or it could be detailed and complex.

20. Is a federal district court free to order desegregation in a particular district at any time it thinks proper, for example in September, 1955 or February, 1956?

A. Yes. But the procedure required, whereby the district first submits a plan, will probably preclude any court from acting by September, 1955. And of course, the power of any court to act is limited to parties and cases actually before it.

21. Are the federal district courts permitted to take into account local public opinion in determining what plans they will approve?

A. Not necessarily. It is very clear that public opinion must not be allowed to override the constitutional mandate. But it will be difficult for judges to overlook such opinion in passing upon certain matters which they are expressly authorized to consider in approving the administration and timing of de-

segregation plans.

22. Is it possible that some school districts may submit plans which would permit gerrymandered attendance districts, or circuitous administrative procedures, designed to keep Negro students out of particular schools?

A. It is not only possible but highly probable.

23. Will any federal district court approve such a plan?

A. Some lower courts may do so. Most will not. It can be anticipated that in attendance districts which are not "compact units," student assignment systems that are administered on a racial basis, and similar evasions will all be invalidated eventually and most of them will be invalidated by the first court that deals with them.

24. If such a plan is approved by a district court is Supreme Court reversal assured?

A. If the case gets to the Supreme Court, evasion of the constitutional requirement will surely be struck down. Not all cases automatically go to the Supreme Court, however, whether the Supreme Court reviews a particular case will depend both on how well the case is handled by the lawyers presenting it, and on the crowded condition of the Supreme Court docket.

25. What is the status of Negro teachers now?

A. The Supreme Court does not mention this problem. Under another decision, however, their rights are within the "equal protection of the laws" clause of the constitution. A proved policy of firing Negro teachers and retaining white teachers, on racial grounds, would entitle the Negro teachers to judicial relief.

26. Will the court approve a plan under which Negro children may "voluntarily" waive their right to attend non-segregated schools, and instead continue to attend schools set apart for Negroes?

A. This has not been decided. The matter was dealt with in argument before the Supreme Court, but was not mentioned in the court's opinion. It is therefore left to be dealt with by the district courts in passing on proposed plans.

27. May Congress by legislation supersede the Supreme Court decision, or implement it?

A. The Congress may not lawfully set aside the constitutional requirement announced by the court, but it may enact implementing statutes which could supersede in whole or in part the discretionary authority given to federal district courts as to the timing and administration of desegregation plans.

28. Is it possible that some school districts, or even some entire states, may evade the decision for a substantial future period?

A. Yes. This will be possible until actual litigation is successfully concluded against such law violators. The ultimate

outcome of such litigation is certain, but various factors may delay initiation of lawsuits and may delay them procedurally after they are initiated.

29. Is there any way in which the electors of a school district, or other local or state taxing authorities, can be compelled to levy adequate taxes to support non-segregated public schools?

A. There may not be. But the courts may restrain the unconstitutional use of public funds that are expended for educational purposes, if any are so expended.

30. Does the Supreme Court's decision affect the validity of state legislation and plans for current construction or improvement of "separate but equal" school facilities for the use of Negro students?

A. Racial limitations which are expressly or by clear implication made a part of these programs are clearly unconstitutional. If however an educational facility will be available for any use the school authorities may make of it, the construction or improvement as such presumably will not be invalid, but only the racial limitation on its use.

31. What is the status now of plans in some of the southern states for abolition of public schools and for state aid to private schools or to pupils attending them?

A. These plans will presumably be held in abeyance, at least until actual litigation in specific cases proceeds to the point where specific school districts, or a substantial number of districts in a state, are in fact being forced to desegregate. At that point, now obviously somewhat delayed, these plans may again be brought forward.

32. How many federal district courts are there? And where are they?

A. There is at least one federal district court in each state. Some states have two or more. Each district has at least one federal judge. Some districts have more than one judge. In each district there may be two or more "divisions," with the court sitting first in one division then in another. The divisions may be quite small geographically.

THE SCHOOL DECISION

BY

THE U. S. SUPREME COURT

May 17, 1954

Mr. Chief Justice Warren delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion.

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in *Plessy* v. *Ferguson,* 163 U. S. 537. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction. Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is

not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time. In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as in the business and professional world. It is true that public education had already advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race. The doctrine of "separate but equal" did not make its appearance in this Court until 1896 in the case of *Plessy* v. *Ferguson, supra,* involving not education but transportation. American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education. In *Cumming* v. *County Board of Education,* 175 U. S. 528, and *Gong Lum* v. *Rice,* 275 U. S. 78, the validity of the doctrine itself was not challenged. In more recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337; *Sipuel* v. *Oklahoma State Regents,* 339 U. S. 637. In none of these cases was it necessary to re-examine the doctrine to grant relief

to the Negro plaintiff. And in *Sweatt* v. *Painter, supra,* the Court expressly reserved decision on the question whether *Plessy* v. *Ferguson* should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike *Sweatt* v. *Painter,* there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plassy* v. *Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In *Sweatt* v. *Painter, supra,* in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In *McLaurin* v. *Oklahoma State Regents, supra,* the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." Such considerations apply with added force to children in

grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system."

Whatever may have been the extent of psychological knowledge at the time of *Plessy* v. *Ferguson*, this finding is amply supported by modern authority. Any language in *Plessy* v. *Ferguson* contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question — the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term. The Attorney General of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as *amici curiae* upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954. It is so ordered.

IMPLEMENTATION RULING BY THE U. S. SUPREME COURT

May 31, 1955

These cases were decided on May 17, 1954. The opinions of that date, declaring the fundamental principle that racial discrimination in public education is unconstitutional, are incorporated herein by reference. All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded.

Because these cases arose under different local conditions and their disposition will involve a variety of local problems, we requested further argument on the question of relief. In view of the nationwide importance of the decision, we invited the attorney general of the United States and the attorneys general of all states requiring or permitting racial discrimination in public education to present their views on that question. The parties, the United States, and the states of Florida, North Carolina, Arkansas, Oklahoma, Maryland, and Texas filed briefs and participated in the oral arguments.

These presentations were informative and helpful to the court in its consideration of the complexities arising from the transition to a system of public education freed of racial discrimination. The presentations also demonstrated that substantial steps to eliminate racial discrimination in public schools already have been taken, not only in some of the communities in which these cases arose, but in some of the states appearing as amici curiae (friends of the court), and in other states as well. Substantial progress has been made in the District of Columbia and in the communities in Kansas and Delaware involved in this litigation. The defendants in the cases coming to us from South Carolina and Virginia are awaiting the decision of this court concerning relief.

Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility of elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.

In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power.

At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a non-discriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operate in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a non-racial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet the problems and to effectuate a transition to a racially non-discriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases.

The judgments below, except that in the Delaware case, are accordingly reversed and remanded to the district courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially non-discriminatory basis with all deliberate speed the parties to these cases. The judgment in the Delaware case — ordering the immediate admission of the plaintiffs to schools previously attended only by white children — is affirmed on the basis of the principles stated in our May 17, 1954, opinion, but the case is remanded to the Supreme Court of Delaware for such further proceedings as that court may deem necessary in light of this opinion.

It is so ordered.